

1 TERRY GODDARD
Attorney General
2 Firm State Bar No. 14000

3 ELIZABETH A. CAMPBELL
Assistant Attorney General
4 State Bar No. 018311
1275 W. Washington, CIV/LES
5 Phoenix, Arizona 85007-2997
Tel: (602) 542-7979
6 Fax: (602) 364-3202

7 Attorneys for the Arizona State Board of Pharmacy

8
9 **BEFORE THE ARIZONA STATE BOARD OF PHARMACY**

10 In the Matter of

11 **HYMAN ABRAMCHICK**

12 Holder of License No. S012245
For the Practice of Pharmacy
13 In the State of Arizona

Board Case No. 09-0010-PHR

**CONSENT AGREEMENT
AND ORDER FOR SUSPENSION
AND PROBATION**

14
15 **RECITALS**

16 In the interest of a prompt and judicious settlement of this case, consistent with the
17 public interest, statutory requirements and the responsibilities of the Arizona State Board
18 of Pharmacy ("Board") under A.R.S. § 32-1901, *et. seq.*, Hyman Abramchick
19 ("Respondent"), holder of Pharmacist License Number S012245 in the State of Arizona,
20 and the Board enter into the following Recitals, Findings of Fact, Conclusions of Law
21 and Order ("Consent Agreement") as a final disposition of this matter.

22 1. Respondent has read and understands this Consent Agreement and has had
23 the opportunity to discuss this Consent Agreement with an attorney, or has waived the
24 opportunity to discuss this Consent Agreement with an attorney.
25
26

1 2. Respondent understands that he has a right to a public administrative
2 hearing concerning the above-captioned matter, at which hearing he could present
3 evidence and cross examine witnesses. By entering into this Consent Agreement,
4 Respondent knowingly and voluntarily relinquishes all right to such an administrative
5 hearing, as well as rights of rehearing, review, reconsideration, appeal, judicial review or
6 any other administrative and/or judicial action, concerning the matters set forth herein.

7 3. Respondent affirmatively agrees that this Consent Agreement shall be
8 irrevocable.

9 4. Respondent understands that this Consent Agreement or any part of the
10 agreement may be considered in any future disciplinary action by the Board against him.

11 5. Respondent understands this Consent Agreement deals with Board
12 Complaint No. 3536 involving allegations of unprofessional conduct against Respondent.
13 The investigation into these allegations against Respondent shall be concluded upon the
14 Board's adoption of this Consent Agreement.

15 6. Respondent understands that this Consent Agreement does not constitute a
16 dismissal or resolution of any other matters currently pending before the Board, if any,
17 and does not constitute any waiver, express or implied, of the Board's statutory authority
18 or jurisdiction regarding any other pending or future investigation, action or proceeding.

19 7. Respondent also understands that acceptance of this Consent Agreement
20 does not preclude any other agency, subdivision, or officer of this State from instituting
21 any other civil or criminal proceedings with respect to the conduct that is the subject of
22 this Consent Agreement.

23 8. Respondent acknowledges and agrees that, upon signing this Consent
24 Agreement and returning this document to the Board's Executive Director, he may not
25 revoke his acceptance of the Consent Agreement or make any modifications to the
26

document regardless of whether the Consent Agreement has been signed by the Executive Director. Any modification to this original document is ineffective and void unless mutually agreed by the parties in writing.

9. Respondent understands that the Consent Agreement shall not become effective unless and until adopted by the Board and signed by its Executive Director.

10. If a court of competent jurisdiction rules that any part of this Consent Agreement is void or otherwise unenforceable, the remainder of the Consent Agreement shall remain in full force and effect.

11. Respondent understands and agrees that if the Board does not adopt this Consent Agreement, he will not assert as a defense that the Board's consideration of this Consent Agreement constitutes bias, prejudice, prejudgment or other similar defenses.

12. Respondent understands that this Consent Agreement is a public record that may be publicly disseminated as a formal action of the Board and may be reported as required by law to the National Practitioner Data Bank and the Healthcare Integrity and Protection Data Bank.

13. Respondent understands that any violation of this Consent Agreement constitutes unprofessional conduct and may result in disciplinary action. A.R.S. §§ 32-1901.01(B)(20), -1927(A)(1).

ACCEPTED AND AGREED BY RESPONDENT

Hyman Abramchick
Hyman Abramchick

Dated: 1/23/09

Subscribed and sworn to before me in the County of MARICOPA, State of ARIZONA, this 23rd day of JANUARY, 2009, by Hyman Abramchick.



Margaret M. Smith
NOTARY PUBLIC

My Commission expires: June 14, 2011

1 **FINDINGS OF FACT**

2 1. The Board is the duly constituted authority for licensing and regulating the
3 practice of pharmacy in the State of Arizona.

4 2. Respondent is the holder of license number S012245 to practice as a
5 pharmacist in the State of Arizona.

6 3. During all times relevant to these Findings, Respondent worked as a
7 pharmacist at Walmart Pharmacy #10-2113 in Phoenix, Arizona (the "Pharmacy").

8 4. In November 2007, Respondent took several tablets of Fioricet (butalbital
9 with acetaminophen and caffeine) from the Pharmacy. Respondent did not pay the
10 Pharmacy for the Fioricet. While Respondent did have a prescription for Fioricet, that
11 prescription had not been submitted to the Pharmacy.

12 5. Fioricet is a prescription-only drug.

13 6. On or about October 30, 2008, respondent submitted to a hair test drug
14 screen which was positive for methamphetamine.

15 7. Methamphetamine is a dangerous drug. A.R.S. § 13-3401(6)(b)(xiii).

16 **CONCLUSIONS OF LAW**

17 1. The Board possesses jurisdiction over the subject matter and over
18 Respondent pursuant to A.R.S. § 32-1901 *et seq.*

19 2. Pursuant to A.R.S. § 32-1927(A)(1), the Board may discipline a pharmacist
20 who has engaged in unprofessional conduct.

21 3. Respondent's practice and conduct, as described in the Findings of Fact,
22 constitutes unprofessional conduct pursuant to A.R.S. § 32-1901.01(B)(2) (Violating any
23 federal or state law, rule or regulation relating to the manufacture or distribution of drugs
24 and devices or the practice of pharmacy).

1 4. The conduct and circumstances described above constitutes unprofessional
2 conduct pursuant to A.R.S. § 32-1901.01(B)(8) (Committing a felony, whether or not
3 involving moral turpitude, or a misdemeanor involving moral turpitude or any drug-
4 related offense. In either case, conviction by a court of competent jurisdiction or a plea
5 of no contest is conclusive evidence of the commission).

6 5. The conduct and circumstances described above constitute unprofessional
7 conduct pursuant to A.R.S. § 32-1901.01(B)(10) (Violating a federal or state law or
8 administrative rule relating to marijuana, prescription-only drugs, narcotics, dangerous
9 drugs, controlled substances or precursor chemicals when determined by the board or by
10 conviction in a federal or state court).

11 6. Respondent's practice and conduct, as described in the Findings of Fact,
12 constitutes unprofessional conduct pursuant to A.R.S. § 32-1901.01(B)(11) (Knowingly
13 dispensing a drug without a valid prescription order as required pursuant to section 32-
14 1968, subsection A).

15 5. Respondent's conduct as described in the Findings of Fact constitutes a
16 violation of A.R.S. § 32-1968(A) ("A prescription-only drug shall be dispensed only
17 under one of the following conditions: (1) By a medical practitioner in conformance with
18 A.R.S. § 32-1921; (2) On a written prescription order bearing the prescribing medical
19 practitioner's manual signature; (3) On an electronically transmitted prescription order
20 containing the prescribing medical practitioner's electronic or digital signature that is
21 reduced promptly to writing and filed by the pharmacist; (4) On a written prescription
22 order generated from electronic media containing the prescribing medical practitioner's
23 electronic or manual signature. A prescription order that contains only an electronic
24 signature must be applied to paper that uses security features that will ensure the
25 prescription order is not subject to any form of copying or alteration; (5) On an oral
26

1 prescription order that is reduced promptly to writing and filed by the pharmacist; (6) By
2 refilling any written, electronically transmitted or oral prescription order if a refill is
3 authorized by the prescriber either in the original prescription order, by an electronically
4 transmitted refill order that is documented promptly and filed by the pharmacist or by an
5 oral refill order that is documented promptly and filed by the pharmacist.”)

6 6. The conduct and circumstances described in the Findings of Fact constitute
7 a violation of A.R.S. § 13-1802(A)(1) (A person commits theft if, without lawful
8 authority, the person knowingly controls another person’s property with the intent to
9 deprive that other person of such property). Theft is a crime of moral turpitude. *State v.*
10 *Superior Court of Pima County*, 121 Ariz. 174, 175-76, 589 P.2d 48, 49-50 (App. 1978)
11 (shoplifting involves moral turpitude and bears a close relationship to the common law
12 crime of larceny).

13 7. The conduct described above constitutes a violation of A.R.S. § 13-
14 3407(A)(1) (A person shall not knowingly use a dangerous drug).

15 ORDER

16 Based upon the above Findings of Fact and Conclusions of Law, the Board issues
17 the following Order:

18 1. Respondent’s Pharmacist License No. S012245, which was issued to
19 Respondent for the practice of Pharmacy in the State of Arizona, is hereby
20 **SUSPENDED**, subject to the following terms and conditions:

21 A. Respondent’s license is suspended for at least three (3) months. The
22 period of suspension shall be determined by the Board after reviewing (i)
23 information from Pharmacists Assisting Pharmacists of Arizona (“PAPA”)
24 regarding Respondent’s compliance with the terms of the PAPA program/contract;
25
26

1 (ii) a progress report from Respondent's PAPA counselor, which may be
2 submitted in writing to the Board; and (iii) any input from Respondent.

3 B. No sooner than three (3) months from the effective date of this
4 Consent Agreement, Respondent may request in writing that the Board terminate
5 the suspension. Respondent's request to terminate suspension will be considered
6 at the Board's next regularly scheduled Board meeting. Respondent is required to
7 personally appear at that Board meeting.

8 C. Respondent shall, within ten (10) days of the effective date of this
9 Order, return his pharmacist license to the Board office for the period of
10 suspension.

11 D. Respondent shall, within ten (10) days of the effective date of this
12 Order, contact the Administrative Coordinator of PAPA. Based solely upon the
13 Administrative Coordinator's determination, Respondent shall be required to
14 immediately (within 10 days) (1) enter and successfully complete an in-patient
15 treatment program approved by PAPA; or (2) submit to further evaluation by a
16 PAPA-approved evaluator. If referred for further evaluation, Respondent shall
17 promptly comply with all treatment recommendations made by the evaluator.

18 E. As directed by the PAPA Administrative Coordinator, Respondent
19 shall sign a five (5) year contract with PAPA and abide by each and every
20 requirement of the PAPA contract. Failure to sign the PAPA contract or abide by
21 the PAPA contract's terms is a violation of this Order.

22 2. Upon termination of the period of suspension by the Board, Respondent's
23 reinstated license shall immediately be placed on **PROBATION**. Respondent's
24 probation is subject to the following conditions:
25
26

1 A. No sooner than five (5) years from the beginning of Respondent's
2 probationary period, Respondent shall request in writing that the Board terminate
3 his probation. Respondent's request for termination will be considered at the
4 Board's next regularly scheduled Board meeting. Respondent is required to
5 personally appear at that Board meeting. Respondent's probationary period will
6 continue until Respondent's request for termination is received and the Board
7 terminates the probation.

8 B. Respondent shall continue to comply with the terms of his PAPA
9 contract.

10 C. Respondent shall furnish all pharmacy employers with a copy of this
11 Consent Agreement. Respondent shall ensure that all pharmacy employers submit
12 to the Board a written acknowledgement that they have received a copy of this
13 Consent Agreement within ten (10) days of entering into an employment
14 relationship with Respondent.

15 D. Respondent shall not serve as a preceptor pharmacist or pharmacist
16 in charge.

17 E. Respondent shall advise the Board within ten (10) days of any
18 change in pharmacy employment status.

19 F. Within five (5) years from the beginning of Respondent's
20 probationary period, Respondent shall complete 400 hours of community service
21 approved by Board staff. Respondent shall ensure that all entities to which he
22 provides community service verify in writing to the Board the number of hours
23 completed within 30 days of completing the community service.

24 3. Respondent shall pay all necessary fees and complete all continuing
25 education requirements throughout the term of his suspension and probation.
26

4. Throughout the term of Respondent's suspension and probation, Respondent shall personally appear before the Board when requested to do so by the Board or Board staff.

5. Respondent shall furnish the Board with a list of all jurisdictions in which he maintains or has maintained licensure in the profession of pharmacy along with the registration numbers of said licenses.

6. Respondent shall obey all federal and state laws and rules governing the practice of pharmacy.

7. If Respondent violates this Order in any way or fails to fulfill the requirements of this Order, the Board, after giving the Respondent notice and the opportunity to be heard, may revoke, suspend or take other disciplinary actions against Respondent's license. The issue at such a hearing will be limited solely to whether this Order has been violated. *h*

DATED this 30th day of January, 2009.

ARIZONA STATE BOARD OF PHARMACY

(Seal)

By:

HAL WAND, R.Ph.
Executive Director

1 ORIGINAL OF THE FORGOING FILED
this 30 day of January, 2009, with:

2 Arizona State Board of Pharmacy
3 1700 West Washington, Suite 250
4 Phoenix, Arizona 85007

5 EXECUTED COPY OF THE FOREGOING MAILED
6 BY FIRST-CLASS and CERTIFIED MAIL
this 30 day of Jan., 2009, to:

7 Hyman Abramchick
8 105 N. Links Dr., Apt. 1045
Avondale, Arizona 85323

9 EXECUTED COPY OF THE FOREGOING MAILED
this 30 day of Jan., 2009, to:

10 Kenneth R. Baker
11 RENAUD COOK DRURY MESAROS, P.A.
12 Phelps Dodge Tower
13 One North Central, Suite 900
Phoenix, Arizona 85004
Attorney for Respondent

14 Elizabeth A. Campbell
15 Assistant Attorney General
1275 W. Washington Street, CIV/LES
Phoenix, Arizona 85007
16 Attorney for the Board

17 
18 217329

19
20 7008 0150 0003 1434 7827
21
22
23
24
25
26